IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8044 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI B VAGHASHIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8044 of 1993

MR YN OZA for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/02/2004

ORAL JUDGEMENT

1. In this petition the grievance has been made by the petitioner that on account of the pendency of the departmental inquiry against him, the decision of the

Departmental Promotion Committee [DPC] with regard to his promotion was kept in sealed cover and because of the delay that had been caused in completing the inquiry, the said sealed cover could not be opened and acted upon. In other words the grievance of the petitioner is that he has been deprived of his promotion when it was actually due.

2. The petitioner joined the service of the respondent as Junior Engineer (Civil) on 29th May, 1961. He was thereafter promoted to the post of Deputy Executive Engineer on 15th December, 1971 and to the post of the Executive Engineer on 15th October, 1986. It also appears that by order dated 22nd May, 1992 the deemed date for the promotion to the post of Executive Engineer was granted and he was deemed to have been promoted with effect from 29th October, 1983.

2.1. The petitioner, on 17th March, 1989, was served with a charge-sheet by the Deputy Secretary of the Water Resources Department wherein it was alleged that while working at Rajkot District Panchayat in the year 1984-85 as Deputy Executive Engineer the petitioner had not confirmed whether the width of R.C.C. work was as per the specification. He was also charged of showing the wrong measurement of concrete work of the base as 30 cms. when it was 20 cms. only. The said charge-sheet came to be amended with the service of the second charge-sheet dated 25th February, 1993. It appears from the record of the petition that meeting of the DPC was convened to consider grant of promotion in the month of October 1992. It was convened to consider the cases of promotion of the Executive Engineer to the post of Superintending Engineer. It further appears that so far the petitioner is concerned, the decision of the DPC was kept in sealed cover on account of pendency of the departmental inquiry against him and some of his juniors came to be promoted on 21st July, 1993 to the post of Superintending Engineer. It is stated by the learned advocate for the petitioner that the departmental inquiry that was initiated against the petitioner culminated into passing of order of penalty on 21st March, 1994. The said order was to the effect that the charges against the petitioner were proved and order of stoppage of one increment without future effect was passed. It also appears from the record of the petition that the petitioner retired on 31st July, 1995.

3. The learned advocate for the petitioner has submitted that on account of delay that had been caused in completing the inquiry, the petitioner was wrongly

deprived of his chance of promotion alongwith his juniors from the date on which his juniors were promoted to the post of Executive Engineer i.e. on 21st July, 1993. According to the petitioner, had the inquiry been completed within reasonable time, this situation would not have arisen. It is, therefore, submitted that the petitioner be given a deemed date of promotion to the post of Superintending Engineer alongwith his juniors i.e. 21st July, 1993.

3.1. As against that, Mr. Bhate, Ld. AGP has submitted that for aforesaid irregularities he was served with chargesheet and the departmental inquiry was pending against the petitioner, when meeting of the DPC was convened for considering promotion to the post of Superintending Engineer. In view of the circular dated 23rd September, 1981 the decision of the DPC in respect of promotion of the petitioner was required to be kept in sealed cover. He has further submitted that there was no delay caused in holding the inquiry and completing it.

4. From the record of this petition and considering the rival submissions, it appears that the petitioner was charge-sheeted for the act of misconduct that was alleged to have been committed in the year 1984-85. It also appears that initially in the month of March 1989 he was served with a charge-sheet and thereafter in the month of February 1993 the second charge-sheet, which was by way of amendment to the first charge-sheet, was served and thereafter the actual hearing of the inquiry had commenced. It also appears that the DPC was convened to consider the cases of promotion of the Executive Engineer to the post of Superintending Engineer in the month of October 1992. Since at that time the departmental inquiry against the petitioner was pending, in view of the aforesaid circular, the sealed cover procedure was required to be followed and the decision of the DPC was required to be kept in sealed cover till the inquiry got over. When these are the circumstances, it cannot be said that the decision of the respondent to resort to sealed cover procedure was unreasonable or that it wrongfully deprived the petitioner of his chance to get promotion alongwith his junior Executive Engineer. So far the aspect of delay is concerned, it is clear that the first charge-sheet was submitted in the month of March 1989 and the second by way of amendment to the first, was served in the month of February 1993. The respondent in para. 5 of its affidavit-in-reply has set out the circumstances in what manner the time was consumed for holding the inquiry and ultimately finalizing it in the year 1994. It appears that in

respect of the first charge-sheet the petitioner had submitted his reply on 15th May, 1989, which was considered by the Government at the earliest. While doing so, some defect was revealed which was required to be corrected and the respondent had decided to issue a corrected charge-sheet and that was issued in the month of February 1993. In these circumstances, the delay, if at all there was any, cannot be termed as so unreasonable that it should upset the decision of the respondent to resort to the sealed cover procedure in case of the petitioner. Thus, when during the pendency of the departmental inquiry, such procedure is resorted to in accordance with the aforesaid resolution, no fault can be found with the respondent. This petition, therefore, does not have any merits and it requires to be dismissed and it is hereby dismissed. Rule discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.